IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 329/2003

Shri Vijay Nath Tiwari ..... Appellants
! through: Mr.O.P.Mannie, Advocate

VERSUS

$ Shri Surender & Anr. ..... Respondents
^ through: Mr.J.N.Aggarwal, Advocate with
Mr.Banamali Shukla, Advocate

RESERVED ON : 19.04.2007

% **D**ATE OF DECISION: 07-05-2007

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Injured Vijay Nath Tiwari aged 22 years received injuries in a road accident which took place on 18.10.1996. He filed a claim petition claiming a compensation of Rs.5 lacs on account of injuries sustained by him in the said road accident.

2. Case of the injured is that on 18.10.1996 he boarded a DTC bus bearing no. DBP 6136. He further stated that while he was in the process of alighting from the bus, the driver of the bus,

in a rash and negligent manner, started the bus as a result thereof he fell down from the bus resulting in a fracture of his left hand.

3. Holding that the injured was himself responsible for the accident, the claim petition has been dismissed by the Tribunal. In so holding, Tribunal has noted DD entry no. 21 A dated 18.10.1996. The said DD entry was purportedly recorded on the basis of the statement of injured. The DD entry records that when driver of the bus did not stop the bus at the bus stand where injured was to get down, injured immediately jumped from the front gate of the moving bus and as a result of which injured had fallen on the road and sustained injury on his hand. DD entry further records that there was no mistake on part of the driver of the bus.

4. Aggrieved by the decision of the Tribunal in dismissing his claim petition, injured has filed the present appeal.

5. Learned counsel for the injured contended that Tribunal had not correctly appreciated the evidence on record and has wrongly come to the conclusion that accident in question was caused due to the negligence of the injured.

6. Injured examined himself as PW-2 to establish that accident in question was caused due to rash and negligent driving of the driver of the bus. Driver of the bus, Surinder, examined himself as RW-1 to establish that accident in question was caused

solely due to the negligence of injured. Besides the testimony of afore-noted witnesses, there is no other evidence to suggest the manner in which the accident in question took place.

6. However, the DD entry in question is a pointer indicating the manner in which the accident in question took place. As noted hereinabove, said DD entry was recorded on the basis of statement of injured and records that injured jumped out of the moving bus.

7. It is a relevant fact that said DD entry was recorded nearly 12 hours after the accident took place. DD entry also records that injured was examined by police officials only when he was declared fit for examination by the doctor who was treating him.

8. On being confronted with the said DD entry during cross examination, injured stated that said DD entry has been wrongly recorded as he had stated to the police officials that accident in question was caused when driver of the bus started the bus in a rash and negligent manner while he was in the process of alighting from the bus. He stated that police officials did not record his statement and obtained his signatures on a blank paper.

9. It is difficult to believe the stand taken by the injured. The fact that said DD entry was recorded few hours after the

accident leads to an inference that injured stated the truth when he gave his statement to the police officials who recorded the DD entry. It is difficult to believe that police officials distorted the statement of injured and recorded false DD entry at the instance of the driver of the bus. It is difficult to believe that police officials were manipulated by the driver of the bus.

10. Therefore, the Tribunal has rightly relied upon the afore-noted DD entry in coming to the conclusion that the injured jumped out of the moving bus.

11. However, Tribunal is not right in holding that accident in question was caused solely due to the negligence of the injured.

12. It is the duty of the driver and conductor of the bus to ensure that the passenger stand inside the bus and not on the foot board of the bus. It is the duty of the owner of a passenger bus more so, of a bus plying within a city to install a movable devise which closes the exit gate and is operated by the driver to open the exit gate by causing the devise to move. A lever operated mechanism akin to turn sty gate has to be installed in an intra city passenger bus. The reason is that state of public transport is not too happy. More often than not, excess passengers board the bus. There is pushing and jostling inside the bus.

13. Thus, I hold that the owner of the bus is guilty of

contributory negligence to the extent of 50%.

14. In respect of the pecuniary and non pecuniary loss to the injured deposed that his left hand got fractured on account of injuries sustained by him in the said road accident.

15. Treatment record Ex.PW-2/2, PW-2/3 and PW-2/4 shows that the injured suffered a fracture of the humerus bone of left hand.

16. Injured has also placed on record a disability certificate Ex.PW-2/11. The said disability certificate records that injured had suffered a permanent disability to the extent of 55%. The said certificate is issued by an Orthopedic Surgeon and Eye Surgeon. I see no reason as to why said certificate has been issued by an Eye Surgeon for the reason kind of injury sustained by the injured is such which is outside the purview of an Eye Surgeon.

17. Even otherwise, it is difficult to believe that because of a fracture of the left hand, the injured has suffered a permanent disability to the extent of 55%.

18. Treatment record filed by the injured does not suggest that on account of injury on left hand suffered by the injured, he has suffered a loss in his earning capacity.

19. However, considering that left hand of the injured got fractured in the accident and his contribution was 50%, I consider reasonable to award him compensation in sum of Rs.10,000/-.

The same would be for pain and suffering and medical expenses.

20. The appeal stands disposed of by awarding compensation in sum of Rs.10,000/- to the injured.

21. Compensation shall be paid together with interest @ 6% per annum from date of claim petition till date of realization.

22. No costs.

May 7, 2005 PRADEEP NANDRAJOG, J.
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